

PURCHASING & LICENSING COMMITTEE

12-0432R

RESOLUTION AUTHORIZING AN AGREEMENT WITH MSA PROFESSIONAL SERVICES, INC., FOR PROFESSIONAL ENGINEERING AND ARCHITECTURAL DESIGN SERVICES IN CONSTRUCTION OF A COMMUNICATIONS TOWER AND RADIO TELEMTRY BUILDING ON THE CITY OF DULUTH PARK POINT, FOR AN AMOUNT NOT TO EXCEED \$49,500.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with MSA Professional Services, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. _____, for professional engineering and architectural design services, including construction administration during demolition and construction of the project, for a new communications tower and radio telemetry building on the city of Duluth Park Point tower site near fire hall no. 5, for an amount not to exceed \$49,500, payable from the Capital Improvements Fund 450, Dept./Agency 030 (Finance), Obj. 5520 (Buildings & Structures), Project No. CP2008-OT-0810.

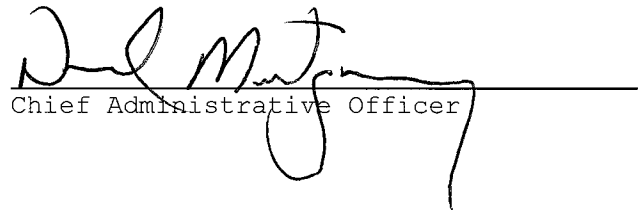
Approved:


Department Director

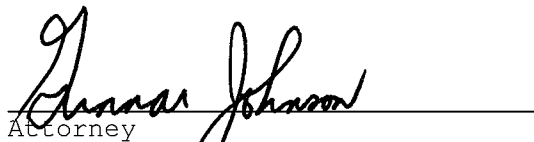
Purchasing Agent




Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

STATEMENT OF PURPOSE: This resolution authorizes an agreement with MSA Professional Services, Inc., for professional engineering and architectural design services in construction of a new communications tower and radio telemetry building for an amount not to exceed \$49,500.

MSA Professional Services, Inc., has an office in Duluth, Minnesota.

Requisition No. 12-0417

PROFESSIONAL ENGINEERING SERVICES AGREEMENT

ENGINEER & CITY OF DULUTH

This agreement is made this _____ day of _____, _____, by and between the City of Duluth, Minnesota hereinafter referred to as the "City" and:

Name: MSA Professional Services, Inc.
Address: 301 W. 1st Street, Suite 408
Duluth, MN 55802

hereinafter referred to as the "Engineer", in consideration of the mutual promises contained herein. This agreement consists of seven sections, a total of 21 pages including Exhibit A, and any Addendum attached.

Payments hereunder, in the estimated amount of Forty-nine Thousand Five Hundred and no/100 Dollars (\$49,500.00) shall be made from Fund (450), Dept./Agency (030), Organization (5520), Object (CP2008-0t0810), Vendor Code (insert), Requisition Number (12-0417).

The professional engineering services obtained by the City under this agreement concern the following described project hereinafter referred to as the "Project":

Project Number: _____
Project Name: Park Point Communications Tower and Radio Telemetry Building
Project Description: Engineering and architectural design services for new communications tower including construction administration during demolition and construction of the Project as described in Engineer's Proposal attached hereto as Exhibit A. In addition Engineer will assist the City as directed in the design of the site for the Radio and Telemetry Building which will be designed and built by City and will assist in designing the connection of the electrical and radio data cabling between the Tower and the RaT Building.

The professional engineering services to be provided under this agreement consist of those phases A through I checked below. A more particular description of each phase is contained in Section II, "Basic Services", of the agreement.

<u>Phase</u>	<u>Description</u>
<u> </u> A.	Study and Report Phase
<u> </u> B.	Preliminary Survey Phase
<u> X</u> C.	Preliminary Design Phase
<u> X</u> D.	Final Design Phase
<u> X</u> E.	Bidding Phase
<u> X</u> F.	Construction Survey and Layout Phase
<u> X</u> G.	Construction Inspection Phase
<u> </u> H.	Additional Services
<u> X</u> I.	Reimbursable Expenses

SECTION I. GENERAL

A) ENGINEER

The Engineer shall provide professional engineering services for the City in all phases of the Project to which this agreement applies, serve as the City's professional engineering representative for the Project as set forth below and shall give professional engineering consultation and advice to the City during the

performance of services hereunder. All services provided hereunder shall be performed by the Engineer in accordance with generally accepted Engineering standards to the satisfaction of the City.

B) NOTICE TO PROCEED

The Engineer shall only begin performance of each Phase of work required hereunder upon receipt of a written Notice to Proceed by City representative with that Phase.

C) TIME

The Engineer shall begin work on each successive phase promptly after receipt of the Notice to Proceed and shall devote such personnel and materials to the Project so as to complete each phase in an expeditious manner within the time limits set forth in Section II. Time is of the essence to this agreement.

D) CITY'S REPRESENTATIVE

The City's representative to the Engineer shall be the City Engineer or his or her designees assigned in writing.

E) ENGINEERING GUIDELINES

All work performed as part of this project shall conform to the most current edition of the Engineering Guidelines for Professional Engineering Services and Developments as approved by the City Engineer and on file in the office of the City Engineer.

SECTION II. BASIC SERVICES

A) STUDY AND REPORT PHASE

☐ Included in this agreement

☒ Not included in this agreement

The Engineer shall:

- 1) City's Requirements
Review available data and consult with the City to clarify and define the City's requirements for the Project.
- 2) Advise Regarding Additional Data
Advise the City as to the necessity of the City's providing or obtaining from others data or services of the types described in Section IV.C, in order to evaluate or complete the Project and, if directed by the City's representative, act on behalf of the City in obtaining other data or services.
- 3) Technical Analysis
Provide analysis of the City's needs, planning surveys, site evaluations, and comparative studies of prospective sites and solutions.
- 4) Economic Analysis
Provide a general economic analysis of various alternatives based on economic parameters and assumptions provided by the City.
- 5) Report Preparation
Prepare a report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved and the alternative solutions available to the City and setting forth the Engineer's findings and recommendations with opinions of probable total costs for the Project, including construction cost, contingencies, allowances for charges of all professionals and consultants, allowances for the cost of land and rights-of-way, compensation for or damages to properties and interest and financing charges (all of which are hereinafter called "Project Costs").
- 6) Report Presentation
Furnish three copies of the report and present and review the report in person with the City as the City Representative shall direct. The cost of report reproduction shall be considered a reimbursable expense and paid in accordance with Section VI.C of this agreement.
- 7) Supplementary Duties

The duties and responsibilities of Engineer during the Study and Report Phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

8) Completion Time

The Study and Report Phase shall be completed and report submitted by NA.

B) PRELIMINARY SURVEY PHASE

☐ Included in this agreement

☒ Not included in this agreement

After written authorization by the City's representative to proceed with the preliminary survey phase, the Engineer shall:

1) General

Perform topographic survey as necessary to prepare the design and provide Construction Survey and Layout as described in Section II.F

2) Boundary Survey

Perform boundary survey if checked.

3) Document Presentation

Furnish a CADD file of the survey base map to the City. Files shall be in the software specified in the Engineering Guidelines for Professional Engineering Services and Developments described in Section I.E.

4) Supplementary Duties

The duties-responsibilities of the Engineer during the preliminary survey phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

5) Completion Time

The preliminary survey phase shall be completed and submitted by (Not Applicable).

C) PRELIMINARY DESIGN PHASE

☒ Included in this agreement

☐ Not included in this agreement

After written authorization by the City's Representative to proceed with the Preliminary Design Phase, the Engineer shall:

1) Preliminary Design Documents

Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.

2) Revised Project Costs

Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project costs.

3) Document Presentation

Furnish three copies of the above preliminary design documents and present and review such documents in person with the City as the City Engineer may direct. The cost of document reproduction shall be considered to be a reimbursable expense and paid in accordance with Section VI.C of this agreement.

4) Supplementary Duties

The duties and responsibilities of the Engineer during the Preliminary Design Phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

5) Completion Time

The Preliminary Design Phase shall be completed and report or plan submitted by September 30, 2012.

D) FINAL DESIGN PHASE

☒ Included in this agreement

☐ Not included in this agreement

1) Drawings and Specifications

On the basis of the accepted preliminary design documents and the revised opinion of probable Project costs, prepare for incorporation in the contract documents Construction Plans to show the character and extent of the Project and specifications.

2) Approvals of Governmental Entities

Furnish to the City such documents and design data as may be required for, and prepare the required documents so that the City may apply for approvals and permits of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

3) Adjusted Project Costs

Advise the City of any adjustments to the latest opinion of probable Project costs, identify cause of change and furnish a revised opinion of probable Project cost based on the drawings and specifications.

4) Contract Document Preparation

Prepare for review and approval by the City, its Attorney and other advisors, contract agreement forms, general conditions and supplementary conditions and (where requested) bid forms, invitations to bid and instructions to bidder, including for federally funded Projects, all documentation, including wage determinations, in order to comply with Davis-Bacon Act or City code requirements, and assist in the preparation of other related contract documents. To the extent possible, the Engineer will follow the document format supplied by the City and use the standard terms and conditions supplied by the City in preparation of these documents.

5) Document Presentation

Furnish three copies of the above documents and present and review them in person with the City. The cost of document reproduction shall be considered to be a reimbursable expense and paid in accordance with Section VI.C of this agreement.

6) Supplementary Duties

The duties and responsibilities of the Engineer during the Final Design Phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

7) Completion Time

The Final Design Phase shall be completed and contract documents submitted by October 15, 2012.

E) BIDDING PHASE

☒ Included in this agreement

☐ Not included in this agreement

The Engineer shall:

1) Assist in Bidding

Assist the City in obtaining bids for each separate City contract for construction, materials, equipment and services.

2) Advise Regarding Contractors and Subcontractors

Consult with and advise the City as to the acceptability of subcontractors and other persons and organizations proposed by the City's contractor(s) (hereinafter called "Contractor(s)" for those portions of the work as to which such acceptability is required by the bidding documents).

3) Consult Regarding Substitutes

Consult with and advise the City as to the acceptability of substitute materials and equipment proposed by the contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.

4) Evaluation of Bids

Assist the City in evaluating bids or proposals and in assembling and awarding contracts.

5) Supplementary Duties

The duties and responsibilities of the Engineer during the Bidding Phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

6) Completion Time

The bidding phase shall be completed by October 31, 2012.

F) CONSTRUCTION SURVEY AND LAYOUT PHASE

☒ Included in this agreement

☐ Not included in this agreement

1) General

This phase of work may or may not be performed in conjunction with Phase G, "Construction Inspection Phase" of this agreement. Inclusion of this phase in the agreement does not imply that services identified under Phase G are to be provided unless specifically indicated in this agreement.

2) Duties

The Engineer shall provide horizontal and vertical control line and grade to enable construction of the improvement as depicted in the Project plans. The number of control points to be established by the Engineer shall be sufficient to permit the construction contractor to construct the improvement within the construction tolerances established in the Project specifications. In addition, the number of control points shall be consistent with standard engineering practice.

3) Accuracy

The Engineer shall provide the horizontal and vertical control points within the same measurement tolerances as the construction tolerances established in the Project specifications. The Engineer shall be responsible for the accuracy of the control points which are established. The Engineer shall be responsible for costs which may result from errors in placement of control points. The Engineer shall be required to establish control points at Engineer's costs only one time. Control points which are lost, damaged, removed or otherwise moved by the Contractor or others shall be promptly replaced by the Engineer and costs for such replacement shall be computed on a time and materials basis, and reimbursed by the City.

The Engineer shall take all reasonable and customary actions to protect the control points established by the Engineer.

4) Supplementary Duties

The duties and responsibilities of the Engineer during the construction survey and layout phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

5) Completion Time

The construction survey & layout phase shall be completed by December 1, 2012.

G) CONSTRUCTION INSPECTION PHASE

☒ Included in this agreement

☐ Not included in this agreement

1) General Duties

Consult with and advise the City and act as its representative as provided herein and in the General Conditions of the construction contract for the Project.

This phase of the work may or may not be performed in conjunction with Phase F "Construction Survey and Layout Phase" of this agreement. Inclusion of this phase in the agreement does not imply that services identified under Phase F are to be provided unless specifically indicated in this agreement.

2) Construction Inspection and Reporting

Make visits to the site with sufficient frequency at the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of the

contractor(s) and to insure that such work is proceeding in accordance with the contract documents. During such visits and on the basis of on-site observations, the Engineer shall keep the City informed of the progress of the work, shall endeavor to guard the City against defects and deficiencies in such work and may disapprove or reject work failing to conform to the contract documents.

3) Warranty Inspection

Eleven months following construction completion, conduct an inspection to document any items to be repaired by the contractor under the conditions of the construction contract warranty. Submit work to be corrected to the Contractor and the City.

4) Review of Technical and Procedural Aspects

Review and approve (or take other appropriate action in respect to Shop Drawings), the results of tests and inspections and other data which each contractor is required to submit, determine the acceptability of substitute materials and equipment proposed by the contractor(s), and receive and review (for general content as required by the specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by the contractor(s).

5) Contract Documents

Receive from each contractor and review for compliance with contract documents all required document submissions including but not limited to performance and payment bonds, certificates of insurance report forms required by any City, State or Federal law or rule or regulation and submit the forms to the City for final approval.

6) Conferences and Meetings

Attend meetings with the contractor, such as preconstruction conferences, progress meetings, job conferences and other Project-related meetings, and prepare and circulate copies of the minutes thereof including to the City.

7) Records

a) Maintain orderly files for correspondence, reports of job conferences, shop drawings and samples, reproductions of original contract documents, including all work directive changes, addenda, change orders, field orders, additional drawings issued subsequent to the execution of the contract, the Engineer's clarifications and interpretations of the contract documents, progress reports, and other Project-related documents.

b) Keep a diary or log book, recording the contractor's hours on the job site, weather conditions, data relative to questions of work directive changes, change orders, or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail, as in the case of observing test procedures and send copies to the City. Take multiple photographs of the Work and keep a log and file of the photos. Specifically maintain records of acceptance and rejection of materials and workmanship.

c) Record names, addresses and telephone numbers of all the contractors, subcontractors, and major suppliers of materials and equipment.

8) Reports

a) Furnish the City periodic reports, as required, on progress of the work and of the contractor's compliance with the progress schedule and schedule of shop drawings and sample submittals.

b) Consult with the City, in advance of scheduled major tests, inspections, or start of important phases of the Work.

c) Draft proposed change orders and work directive changes, obtaining back-up material from the contractor, and make recommendations to the City regarding change orders, work directive changes and field orders.

d) Report immediately to the City upon the occurrence of any accident.

9) Contract Interpretation, Review of Quality of Work

Issue all instruction of the City to the contractor(s); issue necessary interpretations and clarifications of the contract Documents and in connection therewith prepare change orders as required, subject to the City's approval; have authority, as the City's representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the contract documents and judge of the acceptability of the work there under and make decisions on all claims of the contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the contract documents pertaining to the execution and progress of the work.

10) Change Orders and Revisions

Prepare change orders to reflect changes in the Project requested or approved by the City, evaluate substitutions proposed by the contractor(s) and make revisions to drawings and specifications occasioned thereby, and provide any additional services necessary as the result of significant delays,

changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

11) Review of Applications for Payment

Based on the Engineer's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, determine the amount owing to the contractor(s) and recommend in writing payments to the contractor(s) in such amounts; such recommendations of payment will constitute a representation to the City, based on such observations and review, that the work has progressed to the point indicated, that, to the best of the Engineer's knowledge, information and belief, the quality of such work is in accordance with the contract documents (subject to an evaluation of such work as a functioning Project upon substantial completion, to the results of any subsequent tests called for in the contract documents, and to any qualifications stated in his recommendation), and that payment of the amount recommended is due the contractor(s).

12) Determination of Substantial Completion

Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the work has been completed in accordance with the contract documents and if each contractor has fulfilled all of his obligations there under so that the Engineer may recommend, in writing, final payment to each contractor and may give written notice to the City and the contractor(s) that the work is acceptable (subject to any conditions therein expressed).

13) Authority and Responsibility

The Engineer shall not guarantee the work of any contractor or subcontractor, shall have no supervision or control as to the work or persons doing the work, shall not have charge of the work, shall not be responsible for safety in, on, or about the job-site or have any control of the safety or adequacy of any equipment, building component, scaffolding, supports, forms or other work aids. If the Engineer determines that there are deficiencies in materials or workmanship on the Project, or otherwise deems it to be in the best interest of the City to do so, the Engineer shall be responsible to stop any contractor or subcontractor from performing work on the Project, until conditions giving rise to this need, therefore, are rectified.

14) Engineer Not Responsible for Acts of Contractor

The Engineer shall not be responsible for the supervision or control of the acts or omissions or construction means, methods or techniques of any contractor, or subcontractor, or any of the contractor(s)' or subcontractors' or employees or any other person (except the Engineer's own employees and agents) at the site or otherwise performing any of the contractor(s) work; however, nothing contained in this paragraph shall be construed to release the Engineer from liability for failure to properly perform duties undertaken by him in these contract documents or this agreement.

15) Preparation of Record Drawings

The Engineer shall prepare a set of record drawings in accordance with the Engineering Guidelines for Professional Engineering Services and Development described in Section I.E. The cost of document reproduction shall be considered to be a reimbursable expense and paid in accordance with Section VI.C of this agreement.

16) Supplementary Duties

The duties and responsibilities of the Engineer during the construction inspection phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

17) Completion Time

The construction inspection phase shall be completed by December 15, 2012.

H. **ADDITIONAL SERVICES**

☐ Included in this agreement

☒ Not included in this agreement

If authorized in writing by the City, the Engineer shall furnish or obtain other additional services of the following types which are not considered normal or customary basic services except to the extent specifically provided in Section II; these will be paid for by the City as indicated in Section VI.

1) Preparation of Grants; Environmental Statements

- Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project, preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documentation prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- 2) Significant Changes
Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, City's schedule or character of construction or method of financing; and revising previously accepted studies, reports, design documents or contract documents when such revisions are due to causes beyond the Engineer's control.
 - 3) Real Estate Acquisition: Legal Description
Based on preliminary design documents, furnish a legal description and recordable reproducible 8-1/2" X 11" plat of each parcel of real estate in which the City must acquire an interest in order to proceed with construction of the Project.
 - 4) Renderings and Models
Providing renderings or models for the City's use.
 - 5) Alternate Bid Documents
Preparing documents for alternate bids requested by the City for contractor(s)' work which is not executed or documents for out-of-sequence work.
 - 6) Economic Analysis
Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting the City in obtaining licensing; detailed quantity surveys of material, equipment and labor; and audits of inventories required in connection with construction performed by the City.
 - 7) Services Resulting from Acts Beyond Engineer's Control
Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of the contractor(s) as determined by the city representative, (3) prolongation of the contract time due to delays by the contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by the contractor.
 - 8) Manuals
Preparation of operating and maintenance manuals; protracted or extensive assistance in the utilization of any equipment or system (such as initial start-up, testing, and adjusting and balancing); and training personnel for operation and maintenance.
 - 9) Services After Construction Phase
Services after completion of the construction phase excluding the warranty inspection.
 - 10) Legal Proceedings
Preparing to serve or serving as a consultant or witness for the City in any litigation, public hearing or other legal or administrative proceeding involving the Project (except as agreed to under Basic Services).
 - 11) Services Not Otherwise Provided
Additional services in connection with the Project, including services normally furnished by the City and services not otherwise provided for implicitly or by fair implication of this agreement.
 - 12) Supplementary Duties
The following additional services have been identified and are included in the Additional Services Phase any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.
 - 13) Completion Time
The time limit to complete additional services cannot be fully specified in this agreement because the full nature and full extent of additional services are unknown.

SECTION III. (Reserved for future use)

SECTION IV. CITY'S RESPONSIBILITIES

A) FURNISH REQUIREMENTS AND LIMITATIONS

Provide all criteria and full information as to the City's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, economic parameters and any budgetary limitations; and furnish copies of all design and construction standards which the City will require to be included in the Drawings and Specifications.

B) FURNISH INFORMATION

Assist the Engineer by placing at the Engineer's disposal all available information reasonably known to and in possession of the City.

C) REVIEW DOCUMENTS

Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the Engineer.

D) OBTAIN APPROVALS AND PERMITS

Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

E) ACCOUNTING, LEGAL AND INSURANCE SERVICE

Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such auditing service as the City may require to ascertain how or for what purpose any contractor has used the monies paid to him under the construction contract, and such inspection services as the City may require to ascertain that the contractor(s) are complying with any law, rule or regulation applicable to their performance of the work except as otherwise provided in Section II.

F) NOTIFY THE ENGINEER OF DEFECTS OR DEVELOPMENT

Give prompt written notice to the Engineer whenever the City observes or otherwise becomes aware of any development that affects the scope or timing of the Engineer's services, or any defect in the work of the contractor(s).

G) COSTS OF THE CITY'S RESPONSIBILITIES

Bear all costs incident to compliance with the requirements of this Section IV.

SECTION V. GENERAL CONSIDERATIONS

A) SUCCESSORS AND ASSIGNS

The City and the Engineer each binds their respective partners, successors, executors, administrators and assigns to the other party of this agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this agreement; the Engineer shall not assign, sublet, or transfer their respective interests in this agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Engineer.

B) OWNERSHIP OF DOCUMENTS

All drawings, specifications, reports, records, and other work product developed by the Engineer in connection with this Project shall remain the property of the City whether the Project is completed or not.

C) ESTIMATES OF COST (COST OPINION)

Estimates of construction cost provided are to be made on the basis of the Engineer's experience, qualifications and the best of their professional judgment, but the Engineer does not guarantee the accuracy of such estimates as compared to the contractor's bids or the Project construction cost.

D) INSURANCE

- 1) Engineer shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota unless Engineer shall have successfully demonstrated to the City Attorney, in the reasonable exercise of his or her discretion that such insurance is not reasonably available in the market. If the Engineer demonstrates to the reasonable satisfaction of the City Attorney that such insurance requires hereunder is not reasonably available in

the market, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the city which is reasonably available.

- (a) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
 - (b) Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
 - (c) Professional Liability Insurance in an amount not less than **\$1,500,000** Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days notice prior to any cancellation or modification shall be required; and in such event, Engineer agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
 - (d) **City of Duluth shall be named as Additional Insured** under the Public Liability and Automobile Liability, or as an alternate, Engineer may provide Owners-Contractors Protective policy, naming himself and City of Duluth. Engineer shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Engineer to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Engineer's interests and liabilities.
 - (e) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverage's evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverage's ineffective as against the City.
 - (f) **The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.**
- 2) The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Engineer, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Engineer, its employees, agents and representatives in the performance of work covered by this Agreement.
 - 3) Certificates showing that Engineer is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
 - 4) The City shall be named as an additional insured on each liability policy other than the professional liability and the workers' compensation policies of the Engineer.
 - 5) The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least 30 days advanced notice being given to the City.
- 2). Laws, Rules and Regulations.
Engineer agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

E) TERMINATION

- 1) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligation under this agreement through no fault of the terminating party; provided that no such termination may be affected unless the other party is given not

less than fifteen (15) calendar days prior written notice (delivered by certified mail, return receipt requested) of intent to terminate.

- 2) This agreement may be terminated in whole or in part in writing by the City for its convenience; provided that the Engineer is given (1) not less than fifteen (15) calendar days prior written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the City prior to termination.
- 3) Upon receipt of a notice of intent to terminate from the City pursuant to this agreement, the Engineer shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) make available to the City at any reasonable time at a location specified by the City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have accumulated by the Engineer in performing this agreement, whether completed or in process.
- 4) Upon termination pursuant to this agreement, the City may take over the work and prosecute the same to completion by agreement with another party or otherwise.

F) LAWS, RULES AND REGULATIONS

The Engineer agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, State of Minnesota, the City of Duluth and their respective agencies and instrumentalities which are applicable to the work and services to be performed hereunder.

G) INDEPENDENT CONTRACTOR STATUS

Nothing contained in this agreement shall be construed to make the Engineer an employee or partner of the City. The Engineer shall at all times hereunder be construed to be an independent contractor.

H) FEDERAL FUNDING

If Federal Funds (HUD, Revenue Sharing or otherwise) are utilized as a source of Project funding, the Engineer shall abide by the terms of all Federal requirements in the performance of duties hereunder.

I) AMENDMENT OF AGREEMENT

This agreement shall be amended or supplemented only in writing and executed by both parties hereto.

J) HOLD HARMLESS

The Engineer agrees that it shall defend, indemnify and hold harmless the City of Duluth and its officers, agents, servants and employees from any and all claims including claims for contribution or indemnity, demands, suits, judgments, costs and expenses asserted by any person or persons including agents or employees of the City of Duluth or the Engineer by reason of death or injury to person or persons or the loss or damage to property arising out of, or by reason of, any act, omission, operation or work of the Engineer or its employees while engaged in the execution or performance of services under this Agreement except to the extent that such indemnification is specifically prohibited by Minnesota Statutes Chapter 337. Engineer shall not be required to indemnify City for claims of liability arising out of the sole negligent or intentional acts or omission of the City but shall be specifically required to and agrees to defend and indemnify City in all cases where claims of liability against the City arise out of acts or omissions which are passive or derivative of the negligent or intentional acts or omissions of Engineer, such as, but including but not limited to, the failure of the City to supervise, the failure to warn, the failure to prevent such acts or omission by Engineer and any other such source of liability. On ten days written notice from the City of Duluth, the Engineer shall appear and defend all lawsuits against the City of Duluth growing out of such injuries or damages.

SECTION VI. PAYMENT

A) BASIS OF BILLING

City shall pay the Engineer for all services rendered under Section II Phases A through I an amount based on:

___ 1. Hourly rates, not to exceed \$ ____.

___ 2. Lump sum \$49,500.00

For the purposes of this agreement, the principals and employees of the Engineer and their hourly rates

are set forth in Exhibit A hereto.

B) REIMBURSABLE EXPENSES

In addition to payments provided for in paragraphs A and B of this Section, the City shall pay the Engineer the actual costs of all reimbursable expenses incurred in connection with all basic and additional services. Reimbursable expenses means the actual expenses incurred directly in connection with the Project for transportation costs on the basis of actual cost if public transportation is used or (\$0.555 cents) per mile if Engineer's vehicle is used, for travel outside City of Duluth, required hotel and meal expenses as per City policy, toll telephone calls, reproduction of reports, drawings, specifications and similar Project-related items in addition to those required under Section II.

C) PAYMENT FOR WORK COMPLETED

- 1) Monthly progress payments may be requested by the Engineer for work satisfactorily completed and shall be made by the City to the Engineer as soon as practicable upon submission of statements requesting payment by the Engineer to the City. Each statement shall be accompanied by an Invoice Data Sheet as shown in Exhibit A. When such progress payments are made, the City may withhold up to five percent (5%) of the vouchered amount until satisfactory completion by the Engineer of all work and services within a phase called for under this agreement. When the City determines that the work under this agreement for any specified phase hereunder is substantially complete, it shall release to the Engineer any retainage held for that phase.
- 2) No payment request made pursuant to subparagraph 1 of this Section VI shall exceed the estimated maximum total amount and value of the total work and services to be performed by the Engineer under this agreement for that phase or additional service without the prior authorization of the City. These estimates have been prepared by the Engineer and supplemented or accompanied by such supporting data as may be required by the City.
- 3) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement, and as a condition precedent thereto, the Engineer shall execute and deliver to the City a release of all claims against the City arising under or by virtue of this agreement.
- 4) In the event of termination by City under Section V.E., upon the completion of any phase of the Basic Services, progress payments due Engineer for services rendered through such phase shall constitute total payment for such services. In the event of such termination by City during any phase of the Basic Services, Engineer also will be reimbursed for the charges of independent professional associates and consultants employed by Engineer to render Basic Services, and paid for services rendered during that phase on the basis of hourly rates defined in Section VI.A of this agreement for services rendered during that phase to date of termination by Engineer's principals and employees engaged directly on the Project. In the event of any such termination, Engineer will be paid for all unpaid additional services and unpaid reimbursable expenses, plus all termination expenses. Termination expenses mean additional reimbursable expenses directly attributable to termination, which, if termination is at City's convenience, shall include an amount computed as a percentage of total compensation for basic services earned by Engineer to the date of termination as follows: 10% of the difference between the amount which the Engineer has earned computed as described in paragraphs A, B and C of this section and the maximum payment amount described in paragraph E of this section. The above applies only if termination is for reasons other than the fault of the Engineer.

D) STANDARD PAYMENT

The Engineer shall complete all services described in Section II.A through G including all attachments to Section II for an amount including direct expenses not to exceed the amount shown hereunder:

TOTAL \$ 49,500.00

The maximum compensation for all phases A through I shall not exceed:
Forty-nine thousand five hundred **Dollars and 00/100th.**

E) PAYMENT FOR ADDITIONAL SERVICES

City shall pay the Engineer for all additional services rendered under Section II.H an amount based on hourly rates shown in Section VI.A for services rendered by principals and employees assigned to the Project. For the purposes of this agreement, the principals and employees of the Engineer and their hourly rates are set forth in Exhibit A hereto. The maximum payment described in Section VI.E shall not apply to

additional services.

The Engineer and City agree that the full extent of additional services may be unknown. Those additional services which have been identified are described in Section II.H, and that payment for those additional services is estimated to be **\$ NA**.

This agreement is made between the City and the Engineer entered into on the last date below written. In witness, the parties have executed this agreement.

F) TOTAL NOT TO EXCEED:

All payments under this Contract not to exceed \$49,500.00 Payable under:

Fund No. 450 030 5520 CP2008-0t0810.

SECTION VII SPECIAL PROVISIONS

The following exhibits are attached to and made part of this agreement:

- 1) Exhibit A, Engineer's Proposal (inclusive of Engineer's Hourly Rates)

In the event of a conflict between the agreement and any Exhibit, the terms of the Agreement will be controlling.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties to these presents have hereunto caused these presents to be executed the day and year first above written.

Countersigned:

City Auditor
Approved this _____ day of _____, 2012

Department Director
Approved this _____ day of _____, 2012

Purchasing Agent
Approved this _____ day of _____, 2012

Assistant City Attorney
Approved this _____ day of _____, 2012

CITY OF DULUTH-Client

By:

Mayor

Attest:

City Clerk

Date Attested:

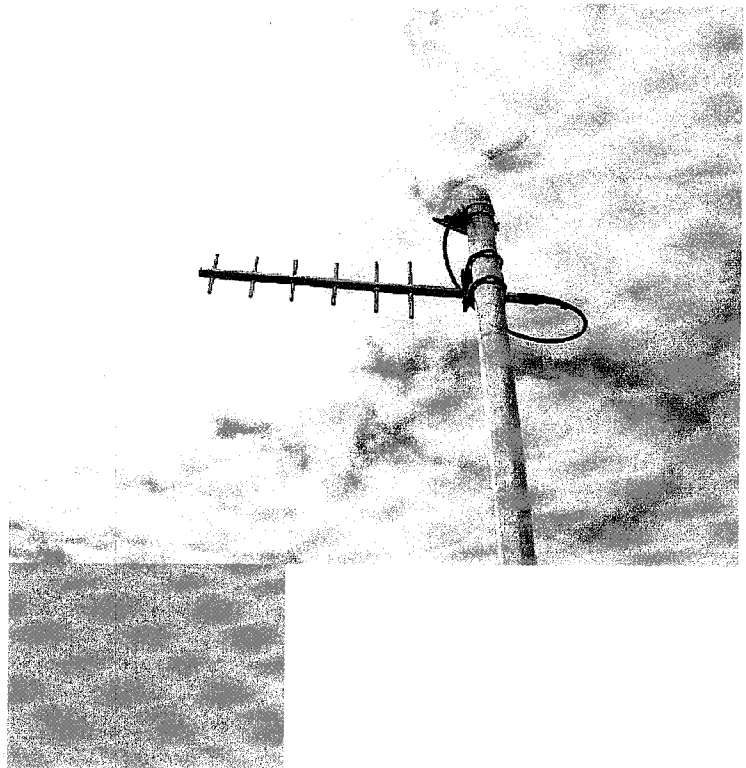
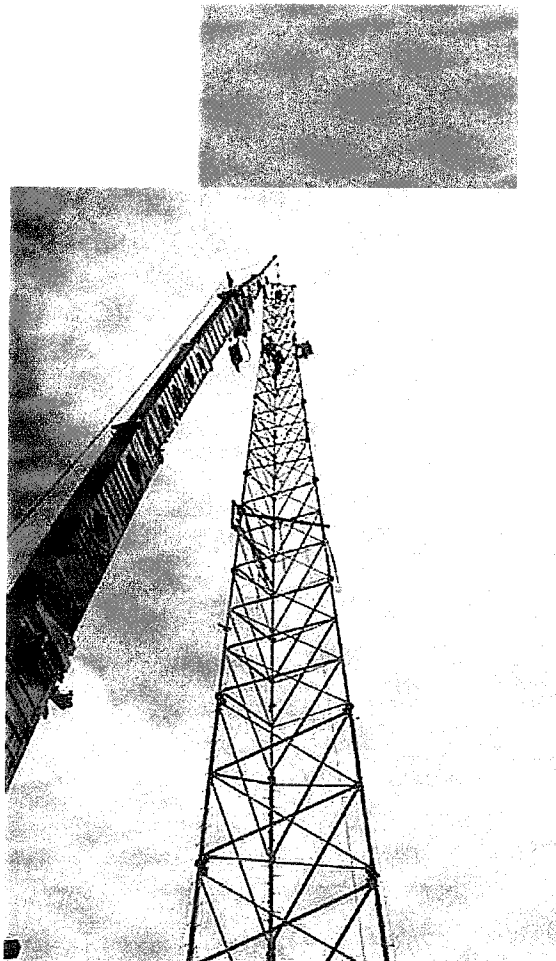
Engineer
MSA PROFESSIONAL SERVICES, INC.

Company Representative

Its:

Title of Representative

Date:



Proposal for
Park Point Communication Tower
and Radio Telemetry Building
City of Duluth, MN

Revised
July 17, 2012



July 17, 2012

Joe Miller and Tari Rayala, AIA
City of Duluth
402 W. First Street
Duluth, MN 55802

Re: Revised Proposal for Park Point Communication Tower and Radio Telemetry Building

Dear Joe and Tari:

As requested, we have revised our January 12, 2012 proposal. The enclosed proposal includes the scope and budget portion of the original submitted information. Modifications to the current project dates, adjusted proposed timeline and current hourly rate sheet are highlighted.

Although the task listing for the work plan is the same as in our original proposal, we have greatly reduced our level of involvement in the Radio Building portion of the project (Phase 4, 5, 6, 7, and 8). We have also reduced the level of effort required for Phase 3 – Site Layout and Design.

Based on these scope revisions, we have adjusted our total cost to \$49,500. We look forward to working with the City on this important project. Please feel free to contact me if you have any questions regarding this proposal.

Sincerely,

MSA Professional Services, Inc.

Mark D. Wallis, P.E.
Project Manager

MDW:amr

cc: Scott R. Chilson, P.E., MSA Professional Services, Inc.

PROJECT UNDERSTANDING/ APPROACH

NEED: The City of Duluth, MN, owns and operates a radio and telemetry network(s) that supports critical communications for daily operation of the following City Departments: City Police and Fire, Town & County Police and Fire, City Department Public Works: Gas, Water, Sewer, Transportation and Street, Parks, Facilities, Information Systems, etc. This communication network is based on several towers and facilities located throughout the City of Duluth. One of the network cornerstone facilities is the antenna tower and building located on Park Point near Fire Hall No.5. The communication tower(s) located on Park Point is past a reasonable expected life cycle and electrical power is connected to the Fire Hall. Failure of this facility could be catastrophic to core City services and operations. The City currently has a Grant Commitment of \$85,000 to replace the existing tower facilities on Park Point with a new 140-foot tall Free Standing Tower and Radio and Telemetry Building. ~~The Grant expires if the construction of the proposed tower is not complete before May 2012. The design and construction of this type of facility requires a minimum of 5-months. If the City intends to leverage the current Grant, it is imperative that the design process begins in January 2012.~~

SCOPE: Provide professional services to facilitate design, bidding, and construction of Communication Tower and Radio Telemetry Building ~~on time sensitive schedule.~~

PRIMARY OBJECTIVE: Procure and construct a 140-foot tall free standing communication tower ~~by May 31, 2012~~ on the City of Duluth's Park Point tower site near Fire Hall No.5.

SECONDARY OBJECTIVE: Assist City staff with site plan ~~for construct~~ a new communication building and tower facility to replace the existing tower(s) and building on parallel project path to the tower.

PROPOSED APPROACH: Approach to achieve the primary and secondary objectives is with parallel projects and timelines. ~~The grant deadline requires the completion of the primary objective, construction of a new tower, by the end of the May 2012. Success of the primary objective depends on expedited design~~

~~and procurement of the tower.~~ The scope procurement contract will focus on performance to provide design, fabrication, delivery and construction assistance of the tower on the specified timeline. Minimum expected timeline for the tower supply:

- Award
- 2-Weeks to provide Shop Drawings and Foundation Design.
- 8-Weeks to fabricate and deliver tower.
- 2-Weeks to construct and erect the tower on the foundation.

A timeline of 10 to 12 weeks for design, production, and construction of the tower is possible but very aggressive. The proposed approach to the project focuses on the tower procurement and delivery. As a second parallel timeline that is still time sensitive to the success of the tower construction. A focus of secondary objective is to prepare the site and design and construction of tower and Radio and Telemetry Building (RaT). The critical performance element of the secondary objective is to construct the tower foundation and erect the tower before the grant deadline.

Once the primary Objective is complete, the construction of the RaT building will be completed. The radio equipment can be relocated to the new tower to prevent extended interruptions to the communication network. After the equipment and system have been relocated and deemed reliable, the decommissioning and demolishing of the existing tower(s) and building will be complete.



SCOPE OF SERVICES

DETAILED SCOPE OF SERVICES: (Detailed services shall be the following key project tasks)

- Project administration and review meeting with the project stakeholders and City manager as required.
- Project coordination with City of Duluth and Contractors.
- Coordination and administration of project timeline and budget tracking.
- Coordination to set contract performance assurance(s) "Liquidated Damages and Incentives".
- Coordination with City to provide owner provided equipment to be installed by the contractor(s).
- Coordinate and verify proposed contracts will meet City of Duluth bid requirements. To be verified to Duluth Purchase Department.
- Code and site application review. Intent to meet permits and approvals requirements.
- Field data acquisition (site topographical survey). Intent is to combine City of Duluth GIS Mapping with field data to facilitate field data.
- Prepare construction staging plan; plan shall include existing equipment inventory and proposed equipment installation plan.
- Prepare and submit preliminary construction plan to the City of Duluth Building and Safety and Zoning.
- Prepare Bid Package for a 140-foot tall Free Standing Communication Tower.
- Review Tower and Base Foundation Design shop drawings prepared and submitted by tower supplier.
- Site Design including new utilities to the proposed RaT Building and Tower Facility.

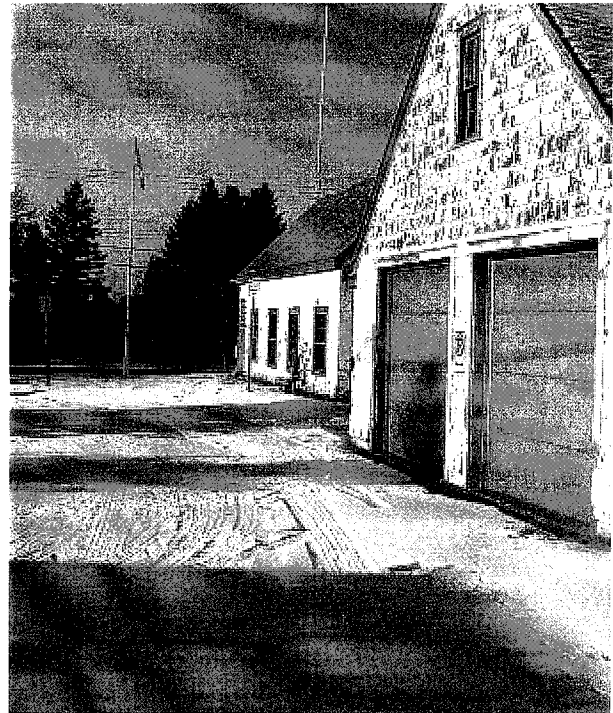


- Prepare general construction contract to construct the proposed tower foundation, ~~assist~~ tower erection, RaT building fabrication, assist relocation of the communication equipment from existing tower and building, decommission and demolition of the existing tower(s) and build(s)ing.
- ~~Design new RaT building; building design will be based on City of Duluth standard RaT Building as constructed at the Highland Elevated Storage Tank. Building design will include architectural, structural, HVAC, plumbing (if required), and electrical. Design will be revised to be site specific based on site requirements and user/application needs.~~
- ~~RaT Building and Tower Foundation construction contracts.~~
- Bid and Award Tower RFP.
- Tower and ~~RaT Building~~ construction administration; construction meetings, Pay Request review, Change Order review, etc.
- Support and assist in the relocation of radio equipment and commissioning of the new facilities.
- Assist in close out of contract(s).
- Prepare Record Drawing(s).

ASSUMPTIONS:

- Service estimate are based on a Time and Material basis.
- Tower design, bid, fabrication, delivery, and construction is as follows:
 - 2-Weeks to design tower & foundation and prepare shop drawings.
 - 8-Weeks to fabricate and deliver tower.
 - 2-Weeks to construct and erected the tower on the foundation.
- MSA assumes that the contracts shall be based on MNDOT base contracts (similar to DPW projects).
- MSA assumes the City of Duluth will provide contract advertising, duplication, bid dispersal, administration, etc. (similar to DPW Projects).
- MSA assumes the existing soil boring information is representative and soil characteristics of the proposed tower location.
- MSA assumes the new tower and RaT building can be install adjacent to existing facility. No temporary tower or alternate communication infrastructure will be required.

- MSA scope does not provide certified survey map or other legal land documentation services. MSA assumes the City owns and controls property to be improved.
- MSA scope does not include Grant administration.
- MSA scope does not provide contract assurance dispute resolution.
- MSA provides no guarantees or warranties to the project timeline. MSA shall not be responsible for situations that are unforeseen or not within reasonable control. MSA shall perform aggressively and in a timely manner to facilitate and respond to changes.
- MSA provides no warrantee or guarantee for required permit approvals.
- MSA intends to follow the FCC and FAA guidelines provided by the City.
- MSA does not intend to provide any field survey of the equipment that shall be relocated. The City of Duluth shall provide inventory of existing equipment and future equipment.
- MSA provides no warrantee or guarantee to the installation of the proposed Radio Equipment. Installation layout and path conflict requirements shall be provided by the City.



BUDGET

Phase 1 – Tower Acquisition

- Tower Manufacture Coordination
- Tower Layout Plan
- Tower Specification
- Tower Bid Package QA/QC
- Tower Bid Review and Recommendation

Phase 2 – Project Management

- Meetings
- Project Administration
- Correspondence

Phase 3 – Site Layout and Design

- Site Survey and GIS Coordination
- Site Layout & Design
- Site and Building Permit
- Grading Permit
- Site, Utility, Erosion, and Demo Design
- Utility Coordination
- Drafting
- QA/QC

Phase 4 – Building Design

- Client Meetings
- Code Review
- Staff Meeting
- Consultant Coordination
- QA/QC
- Project Administration
- Architectural Design
- Drafting
- Structural Design
- HVAC Design
- Specification
- Owner Review

Phase 5 – Building Bid Package

- Permit Application
- Specification Coordination
- Tower Bid and Foundation Design Coordination
- Drafting

Phase 6 – Bid/Award

- Project Management
- Meetings
- Prepare Bid
- Public Bid
- Analyze Bid

Phase 7 – Construction Administration

- Project Management
- Correspondence
- Meetings
- Shop Drawings
- Pay Application Review
- Change Orders
- Record Drawings
- Punchlist
- Close Out

Phase 8 – Construction

- General Observation
- General Surveying/Staking
- Pay Quantity Measurements
- Test Utilities
- Coordinate Equipment Switch Over

Total: \$49,500.00

PROJECT TEAM

Project Manager: Mark Wallis, P.E., will be the designated project manager for this project. Mark will coordinate all of the planning and engineering tasks required to make sure this project stays on schedule. He has managed many projects from design through completion. He is very familiar with the need to get this project started and completed with the need to fill the grant deadlines and communication needs for the City.

Senior Project Engineer and Project Specialist: Scott Chilson, P.E., is a licensed Professional Engineer that has spent the past 5-years serving City of Duluth on a variety of public works project(s). His unique experience, knowledge, and technical skill with building design, electrical design, communication, and project management will provide the team a technical backbone to keep this project on the required timeline.

Project Architect: Allen Szymanski, P.E., AIA is a licensed Architect and Structural Engineer. Al has provided design and construction services on several City of Duluth projects over the past several years. Al was the lead Architect on the design of the RaF building construction at the Highland EST. His familiarity with this base design will expedite the design process of the new Park Point building.

Staff Engineer: Thomas DesMarais is an EIT and has been involved in many MSA projects, from design through construction.

Project Architect: Carolyn Wastlund, P.E., LEED®AP has experience in industrial and commercial office facilities; retail facilities; manufacturing; assembling; and warehousing facilities; and municipal waste and water facilities consisting of new construction, additions, and alterations.

Senior Design Tech: Kevin Krueger has expertise in assisting the architect in the development and preparation of the architectural and structural working drawings.

Project Administrator: Renee Samuelson is a senior project administrator. She has over 10 years of work experience with MSA.

MSA Rate Schedule

CLASSIFICATION	LABOR RATE
Architects	\$114-\$134.00/hr
Clerical	\$40-71.00/hr
Draftsperson	\$50-93.00/hr
Geographic Information Systems (GIS)	\$59-\$111.00/hr
Housing Administration	\$45-\$99.00/hr
Hydrogeologists	\$89-\$123.00/hr
Planners	\$71-\$123.00/hr
Principals	\$116-\$160.00/hr
Professional Engineers	\$77-\$160.00/hr
Project Manager	\$59-\$160.00/hr
Surveyors	\$79-\$129.00/hr
Staff Engineers	\$70-\$102.00/hr
Technicians	\$45-\$99.00/hr
Wastewater Treatment Plant Operator	\$61-77.00/hr
REIMBURSABLE EXPENSES	
Copies/Prints	Rate based on volume
Fax	\$1.00/page
GPS Equipment	\$40/hour; 2 hour min.
Mailing/UPS	At cost
Mileage (currently \$0.555/mile)	Rate set by Fed. Gov.
Nuclear Density Testing	\$25.00/day + \$10/test
Organic Vapor Field Meter	\$100.00/day
PC/CADD Machine	Included in labor rates
Robotics Geodimeter	\$30/hour; 2 hour min.
Stakes/Lathe/Rods	At cost
Total Station	Included in labor rates
Travel Expenses	At cost

** Labor rates represent an average or range for a particular job classification. These rates are in effect until March 1, 2013. After March 1, 2013, these rates may increase by not more than 4% per year.